

**APPENDIX F**  
**MASTER SOFTWARE LICENSE AND SUPPORT AGREEMENT**

This Master Software License and Support Agreement ("Agreement") is entered into by and between LANDesk Software, Inc., with its principal office located at 698 West 10000 South, Suite 500, South Jordan, UT 84095 ("Company"), and \_\_\_\_\_, a \_\_\_\_\_ corporation with its principal office located at \_\_\_\_\_ ("Customer"). This Agreement is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"). In consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Customer agree as follows:

**Sales Model.** Customer has elected to use the following Payee for purchasing Company Products on the Order Form:

<input type="checkbox"/>	<b>Company Authorized Reseller</b> Reseller: _____ Address: _____ _____
<input type="checkbox"/>	<b>Company</b> (Only if Customer is purchasing directly from Company)

**Fees.** Customer shall pay Payee the Fees detailed in DIR Contract No. DIR-SDD-2198, Appendix C Pricing Index, for Company Products and Support Services as specified on the Order Form and purchased under this Agreement.

**Definitions.** The definitions for key terms used in this Agreement are specified in Exhibit C.

**Exhibits.** The following Exhibits are attached hereto and incorporated herein as part of this Agreement:

- Exhibit A: License, Subscription, and Other General Terms
- Exhibit B: Support and Professional Services
- Exhibit C: Definitions
- Exhibit D: Initial Order Form for Company Products

**Execution.** Company and Customer each represent that the individuals signing below are duly authorized to execute this Agreement on behalf of the Party for which they are signing. This Agreement may be executed in one or more counterparts, each of which shall be deemed an enforceable original of the Agreement, but all of which together shall constitute one and the same instrument, and facsimile signatures shall be as effective and binding as original signatures.

**Notices.** Notices shall be deemed served when received by addressee or, if delivery fails by reason of some fault or action of the addressee, when tendered for delivery. Either Party may change the notice address or recipient at any time by providing written notice to the other Party. All notices required or permitted to be given hereunder shall be in writing, reference this Agreement (with Effective Date and Customer), and be delivered by hand, prepaid courier, or registered or certified mail, postage prepaid, and addressed as follows:

**If to Customer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If to Company:**

LANDesk Software, Inc.  
Attention: Legal Department  
698 West 10000 South, Suite 500  
South Jordan, UT 84095 USA

**Final Agreement.** DIR Contract No. DIR-SDD-2198 and this Agreement constitute the entire agreement and understanding between the Parties and supersedes all other prior and contemporaneous communications, discussions, understandings, negotiations, arrangements and agreements between the Parties, whether written or oral, relating to the subject matter of this Agreement. Any purchase order (or other document) submitted by Customer with terms that are in addition to, different from, or inconsistent with this Agreement are not binding on Company and without effect. No vendor, distributor, dealer, retailer, reseller, or other person, partnership, or entity is authorized by Company to modify this Agreement or make any warranty, representation, or promise different than, or in addition to, the warranties, representations or promises expressly set forth in this Agreement. This Agreement may be modified or amended only in writing, duly executed by both Parties. In the event of a conflict in terms, the terms of DIR Contract No. DIR-SDD-2198 will have precedence and control.

Agreed to and accepted by:

**LANDesk Software, Inc. ("Company")**

\_\_\_\_\_ (**"Customer"**)

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT A: LICENSE, SUBSCRIPTION, AND OTHER GENERAL TERMS**

**1. LICENSES.** All licenses from Company to Customer are conditioned on (a) Customer's payment to Payee of all applicable Fees and (b) Customer's compliance with this Agreement.

**1.1 Perpetual License.** For any Perpetual Software, Company grants to Customer a perpetual, non-exclusive, non-transferable, internal, restricted license to install, use, execute, and store the specified Perpetual Software and related Documentation at Customer locations in a quantity not to exceed the number of Authorized Nodes for each specific Perpetual Software (subject to the True Up process).

**1.2 Subscription License.** For any Subscription Software, Company grants to Customer a non-exclusive, non-transferable, internal, restricted, and time-limited license (for the initial period and any renewal) to install, use, execute, and store the specified Subscription Software and related Documentation at Customer locations in a quantity not to exceed the number of Authorized Nodes for each such Subscription Software (subject to the True Up process).

**1.3 Deliverables License.** For any Support Services or Professional Services, Company grants to Customer a limited, non-exclusive, and non-transferable, internal license to use all Deliverables resulting from such Support Services or Professional Services at Customer locations.

**1.4 Affiliate, Consultant, and Contractor Use.**

(i) **Affiliates.** Customer's rights to use the Company Products will extend to Customer's Affiliates provided that Customer shall remain responsible and liable for all such extended use. If an entity ceases to be an Affiliate, then all such use rights for that entity shall immediately terminate and Customer shall ensure that such entity immediately erases or destroys all copies of the Company Products within that entity's possession or control. If requested by Company, Customer will provide a signed certificate representing that such destruction has occurred.

(ii) **Consultants and Contractors.** Customer may permit third-party consultants and contractors (such as suppliers of IT services) to use the Company Products solely for the benefit of Customer's business, provided that Customer remains responsible and liable for all third-party use. If any such third-party ceases to be a service provider to Customer, then all such use rights for that third party shall immediately terminate and Customer shall ensure that such third-party immediately erases or destroys all copies of the Company Products within that third-party's possession or control. If requested by Company, Customer will provide a signed certificate representing that such destruction has occurred.

(iii) **Combined Use.** The combined use of Company Products by Customer, Affiliates, and consultants and contractors must be in accord with the quantity, type, and other limitations specified in this Agreement.

**1.5 Backup Copies.** Customer shall be permitted to make a reasonable number of copies of any Software Products for standard testing, backup, disaster recovery and archival processes. Each such copy must retain all proprietary and copyright notices.

**1.6 Restrictions on Use.** Company reserves all rights not expressly granted to Customer herein. Except to the most limited extent required by applicable law or expressly authorized in this Agreement, Customer, for itself and all Affiliates, consultants, and contractors, agrees it will not:

(i) reverse engineer, modify, adapt, decompile, reprogram, translate, merge, disassemble, create derivative works of, sublicense, copy, sell, distribute, transfer, or assign Company Products, any Confidential Information, prototypes, pre-release or trial-use software;

(ii) make Company Products available for use or access by third-parties including, without limitation, via the Internet, as part of any outsourcing service, managed service, service bureau, rent, timeshare, or lease offered by Customer;

(iii) use any individual component or function of a Company Product as a standalone product;

(iv) use Company Products to perform any unlawful, harmful, threatening, abusive, harassing, tortious, or defamatory activity or to otherwise breach the rights of any third party;

(v) use Company Products in automatic, semi-automatic, or manual tools to create or run virus signatures, virus detection routines, or detecting malicious code or data; or

(vi) subject any Company Product to any open source or quasi-open source license agreement not otherwise applicable.

**1.7 Third-Party Software.** Customer is solely responsible for obtaining and properly licensing any third-party software (including database products) that it uses with any Company Products. In addition, Company Products may be shipped with non-integrated software from third-parties (e.g., drivers, utilities, operating system components, etc.) and are

provided "AS IS" without warranty of any kind, whether express or implied, from Company. Customer's use of such third-party software, and any related support or warranty, if any, is subject to the third-party licenses supplied with such products or any applicable manufacturer's warranty. Some third-party software may include licenses or limited warranties to Company and, to the extent permissible, Company shall pass through all such licenses and limited warranties, if any, to Customer. Company expressly disclaims and Customer expressly waives any liability of any kind against Company with respect to use of such third-party software.

**1.8 DCOM Software.** Certain Software Products may require the use of Microsoft's DCOM software, which may be distributed with the applicable Software Products upon the condition that Customer and each of its end users has a valid licensed copy of Windows 2000/NT/95/98/XP/ME/Vista/7 (or other future versions) on the computer on which the Software Products are installed.

**2. SUBSCRIPTION PERIOD, RENEWAL, AND SUPPORT.**

**2.1 Initial Period.** Unless specified otherwise in the Order Form, each subscription is for a period of one (1) year and, for the initial order, begins on the Effective Date. If Customer purchases additional Subscription Software or additional Authorized Nodes for a previously licensed Subscription Software, Company may pro-rate the price and subscription period for such additional purchases (generally so that all subscriptions have a common end date).

**2.2 Auto-Renew.** To ensure uninterrupted use of the Subscription Software, each subscription period shall automatically renew for an additional one (1) year period unless either Party provides written notice not to auto-renew to the other Party at least sixty (60) days before the end of the then-current subscription period. For each renewal, Customer shall pay to Payee the applicable subscription fees for such renewal period as calculated pursuant to Payee's then-current fee schedule.

**2.3 Subscription Support.** Subscription Software includes Software Upgrade Protection during the subscription period. Additional Support Services may also be available for purchase by Customer.

**2.4 Subscription Content.** Company may cease to provide access to any databases and content provided for use with the Subscription Software at any time. Additionally, Company makes no warranty and disclaims all liability for any external links, Internet addresses, software, patches, updates, or other similar information from third-parties made available via any Subscription Software.

**3. ACTIVATION, VERIFICATION, TRUE-UP, AND AUDIT.**

**3.1 Activation of Company Products.** To install and start use of the Company Products, Customer may be required to input a user name and password (provided by Company upon completion of the license or purchase process) used to create the initial Authorized Certificate to activate the Company Products. Activation is performed at the Server and the process may be completed either by the Internet or by email. Customer may need to re-perform the activation process if Customer significantly modifies the hardware configuration of an active Server. Customer agrees not to override or bypass the activation process.

**3.2 Verification and Audit.** Company may periodically verify and audit Customer's compliance with this Agreement.

(i) **Electronic Verification.** Electronic verification is performed via transmission of certain Node Count Data from Customer to Company. Company Products will periodically generate Node Count Data and Customer agrees to send, within thirty (30) days, such information to Company either by email (as instructed by Company) or automatically via the Internet. Failure to provide such Node Count Data to Company within the thirty (30) day period may render Company Products inoperative or reduce functionality until such Node Count Data is provided to Company and the Authorized Certificate (if any) is updated. Customer agrees not to override or bypass this verification process.

(ii) **Audit.** Upon at least fifteen (15) days prior notice, Company may conduct (or have conducted) an audit of Customer's compliance with this Agreement. Such audits will not generally occur more than once in any annual period and the right to conduct such audits shall continue for two (2) years following termination of this Agreement. Any costs to Company for such audits will be paid by Company unless the audit results demonstrate (a) Customer has breached any intellectual property right of Company which has not been corrected (or cannot be corrected) via the True Up process; or (b) Customer has failed to pay any Fees totaling ten percent (10%) or more of all payments from Customer in the 12 months immediately prior to the audit. Customer agrees that an audit involving more than one Customer location (including Affiliate, consultant, and

contractor use) shall constitute a single audit. Failure to conduct an audit in any period shall not constitute a waiver to conduct future audits.

**3.3 True-Up Process.** While this Agreement is in effect, Customer agrees to perform a True Up within sixty (60) days after (i) the end of each annual period after the Effective Date; and (ii) each time Customer's use of Software Products exceeds 110% of the licensed quantity or Customer adds a new type of Company Product.

**3.4 Additional Order to Bring Current.** If the results of any verification, audit, or True Up process show that Customer's use of Company Products exceeds the licensed quantity or type, Customer will submit an Order Form within ten (10) business days for all such excess use. Customer also agrees that Company may proactively send Customer an invoice to cover such excess use (using Company's list price).

#### **4. INDEMNIFICATION.**

Indemnification Terms are detailed in DIR Contract No. DIR-SDD-2198, Appendix A, Section 9.A. Indemnification.

#### **5. LIMITED WARRANTIES.**

**5.1 Limited Warranty for Media.** For thirty (30) days from the Effective Date, Company warrants to Customer only, and not to any third party, that the media on which the Software Products are furnished (if any), will be free from defective material and workmanship. Company's entire liability and Customer's exclusive remedy for any breach of the limited warranty for media shall be to replace such defective media.

**5.2 Limited Warranty for Software.** For ninety (90) days from the Effective Date, Company warrants to Customer only, and not to any third party, that the Software Products shall function without Error. If Customer believes there has been a breach of this limited warranty for software and provides notice to Company giving reasonable detail of the alleged breach within such ninety (90) day period, Company shall make commercially reasonable efforts to investigate and correct such Error. If Company is unable to correct such Error, Company may elect to terminate this Agreement and Company's entire liability, and Customer's exclusive remedy, for a breach of this limited warranty for software shall be for Customer to uninstall and return the applicable Software Product and for Company to refund the fees received for such Software Products.

**5.3 Limited Warranty for Support Services and Professional Services.** Company warrants that the Support Services and Professional Services, if any, will be performed in a workmanlike manner, consistent with industry standards reasonably applicable to the performance of like services. If Customer believes there has been a breach of this limited warranty for Support Services and Professional Services and provides notice to Company giving reasonable detail of the alleged breach within thirty (30) days after performance of the allegedly breaching Support Services, Company will promptly investigate and, if Company determines there has been a breach of this warranty, Company's sole obligation, and Customer's exclusive remedy, will be for Company to correct or re-perform such Support Services or Professional Services as necessary to cause them to comply with this limited warranty. With regards to Support Services, if Company is unable to correct a breach of this limited warranty after repeated efforts, Company may elect to provide Customer an equitable refund of fees paid for such Support Services (up to the total amount of fees received for Support Services in the twelve (12) months prior to the alleged breach) to reflect any reduction in the value of the Support Services as a result of the uncorrected breach. With regards to Professional Services, if Company is unable to correct a breach of this limited warranty after repeated efforts, Company may elect to provide Customer an equitable refund of fees paid (or the fees to be paid) for such Professional Services (up to the total amount of fees received for such Professional Services) to reflect any reduction in the value of the Professional Services as a result of the uncorrected breach.

**5.4 Limited Warranty for Hardware Products.** Company's standard limited warranty for Hardware Products varies by product. Hardware Product warranty terms, if any, are provided with the material accompanying each hardware purchase. ALL LIMITED WARRANTIES FOR HARDWARE PRODUCTS ARE VOID IF FAILURE RESULTS FROM (a) ACCIDENT, ABUSE, OR MISAPPLICATION, OR (b) POWER SURGES, LIGHTNING, WATER EXPOSURE, OR ACT OF GOD. Company's entire liability and Customer's exclusive remedy for purchasers of Hardware Products, shall be, at Company's option, either (a) repair or advanced replacement of the Hardware Product; or (b) an equitable adjustment in the price paid for such Hardware Product. Any replacement will have the same limited warranties for the remainder of the term for the original product.

**5.5 Warranty Exclusion.** Company is not responsible for any claimed breach of any warranty caused by: (a) modifications made to any Company Product or Deliverable by anyone other than Company (and Company's contractors or consultants working at Company's direction); or (b) the combination, operation or use of any Company Product, Deliverable, Support Service, or Professional Service with items not supplied by Company; or (c) Customer's failure to use any new or corrected versions of the Company Products, Deliverable, Support Service, or Professional Service made available by Company; or (d) Customer's failure to follow any directions, processes, or procedures (including requirements for submitting Incidents to Company), perform any procedures requested by Company (if such procedure would have avoided the problem resulting in the breach), or provide reasonable assistance to enable Company to perform the Support Services (including detailed problem descriptions and access to the Customer's systems and specific implementation); or (e) Company's adherence to Customer's specifications or instructions.

**5.6 LIMITATION.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5 OF THIS AGREEMENT, COMPANY PRODUCTS, DOCUMENTATION, SUPPORT SERVICES, PROFESSIONAL SERVICES, DELIVERABLES, CONTENT FOR SUBSCRIPTION PRODUCTS, CONTENT ON THE SUPPORT PORTAL AND OTHER COMPANY INTERNET SITES, AND ANY OTHER MATERIAL OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS," AND COMPANY (AND ITS SUPPLIERS, LICENSORS, RESELLERS, AND VENDORS) MAKE NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, OR OTHERWISE, WITH RESPECT THERETO, AND COMPANY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT. COMPANY DOES NOT WARRANT THAT ANY OF THE FOREGOING SHALL MEET CUSTOMER'S (AND ANY AFFILIATES', THIRD PARTIES' OR END-USERS') REQUIREMENTS, THAT THE OPERATION SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS SHALL BE CORRECTED. NO COMPANY PRODUCT OR DELIVERABLE IS INTENDED, LICENSED, OR SOLD FOR USE IN ANY HAZARDOUS, HIGH RISK, OR FAIL-SAFE ACTIVITY OR CRITICAL CONTROL SYSTEMS OR APPLICATIONS (INCLUDING, WITHOUT LIMITATION, SYSTEMS FOR SAFETY, HEALTH CARE, DIRECT LIFE SUPPORT, WEAPON, NUCLEAR ENERGY, TRANSPORTATION, COMMUNICATION, ENVIRONMENTAL, OR OTHER CONTROL SYSTEMS) IN WHICH FAILURE OF THE COMPANY PRODUCT OR DELIVERABLE COULD LEAD TO DEATH OR SEVERE PHYSICAL INJURY AND ANY SUCH USE IS UNDERTAKEN AT CUSTOMER'S SOLE RISK, RESPONSIBILITY, AND LIABILITY AND WITHOUT WARRANTY OF ANY KIND.

#### **6. LIMITATIONS OF LIABILITY.**

Limitation of Liability Terms are detailed in DIR Contract No. DIR-SDD-2198, Appendix A, Section 9.K. Limitation of Liability.

#### **7. INTELLECTUAL PROPERTY.**

**7.1 Ownership.** All right, title, and ownership of Software Products, Updates, Upgrades, Support Services, Deliverables, Documentation, Inventions, and all copies thereof, including all worldwide intellectual property rights therein, remains with Company (or, as the case may be, Company's Affiliates, licensors, suppliers or vendors). All Software Products and Deliverables are provided on a license basis only and are not sold. No title to or ownership of any Software Product or Deliverable is transferred to Customer. If ownership of any Deliverable does not result as provided herein by operation of law, then Customer shall cause its respective employees, agents, consultants, and contractors to assign such Deliverable to Company, without further consideration, ownership thereof, including all associated intellectual property rights. Customer shall not remove any copyright notice in or on Company Products, Deliverables, Documentation, or Confidential Information.

**7.2 No Other License.** Except as expressly provided herein, Company grants no rights or licenses, expressly or by implication, estoppel or otherwise, to any Confidential Information or intellectual property including, without limitation, patents, copyrights, trade secrets, trademarks, or trade names. Customer acknowledges that any license from Company does not include any license to design, develop, or to assist others in designing or developing any competing product or service for itself or for any third party.

## 8. PAYMENTS.

Payment Terms are detailed in DIR Contract No. DIR-SDD-2198, Appendix A, Section

## 9. GOVERNING LAW.

9.1 The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions with be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**9.2 Injunctive Relief.** To the extent allowable by the Texas Public Information Act, each Party agrees that (i) the confidentiality and intellectual property rights, restrictions, and obligations in this Agreement are necessary and reasonable for protecting the other Party; (ii) monetary damages would be inadequate to compensate the other Party for any breach of such obligations; (iii) any violation or threatened violation of such obligations will cause irreparable injury to the other Party; and (iv), in addition to any other remedies available in law, in equity or otherwise, the non-violating Party shall be entitled to obtain injunctive relief against any threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages. Each Party agrees that in the event such equitable relief is granted against it, it will not object to courts in other jurisdictions granting provisional remedies enforcing such judgments.

## 10. TERM AND TERMINATION.

Termination Terms are detailed in DIR Contract No. DIR-SDD-2198, Appendix A, Section 10.B. Termination.

## 11. CONFIDENTIALITY.

**11.1 Protection of Confidential Information.** To the extent allowable by the Texas Public Information Act, so long as this Agreement remains in effect and for three (3) years following termination or expiration, each Party agrees that it shall take reasonable measures (which shall be at least those measures it uses to protect its own most highly confidential information but, in no event, less than commercially reasonable measures) to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other Party

**11.2 Permitted Disclosures.** To the extent allowable by the Texas Public Information Act, neither Party may make any disclosures of Confidential Information without the express prior written consent of the other Party, excepting disclosure: (a) to legal and financial advisors in their capacity of advising a Party and to the extent required by law, legal process or financial transactions; (b) to Reseller as reasonably needed to facilitate the purposes of this Agreement; or (c) to a Party's own employees as reasonably needed to facilitate the purposes of this Agreement provided such employees are bound by non-use and non-disclosure obligations substantially similar to protections hereof.

**11.3 Ownership and No Warranty.** All Confidential Information shall remain the property of the disclosing Party and shall be promptly returned to the disclosing Party upon written request. All Confidential Information is provided "AS IS" and without any warranties, express, implied or otherwise, regarding the accuracy, completeness or performance of such Confidential Information.

## 12. GENERAL.

**12.1 Export Control.** Company Products, and any product or technical information provided by Company, may be subject to import and export regulations of the United States ("U.S.") and/or other countries. Customer agrees to comply with all applicable import and export regulations and to obtain any required licenses or classifications for any export or import requirements resulting from Customer's use of the Company Products. Regardless of any disclosure made by Customer to Company of an ultimate destination of the Company Products or any product or technical information, Customer shall not export, re-export or disclose (directly or indirectly) any of the Company Products, any product or technical information provided by Company, or any portion thereof, to entities on the current U.S. export exclusion lists, to any embargoed countries as specified in the U.S. export laws, or in violation of any other applicable law, regulation or government order. Customer will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses. Company Products may contain encryption technology subject to U.S. and/or other countries' laws and regulations including the U.S. Department of Commerce Encryption Regulations. Intra-country restrictions may also be applicable regarding use of software containing encryption technology.

**12.2 U.S. Government Restricted Rights.** The Company Products are provided with "RESTRICTED RIGHTS" and are deemed "commercial computer software" and "commercial computer software documentation" within the meaning of applicable civilian and military Federal acquisition regulations and any supplement thereto. Use, modification, duplication, or disclosure by the United States Government is subject to restrictions as set forth in DFARS 252.227-7014(a)(1) (JUN 1995) (DOD commercial computer software definition), DFARS 227.7202-1 (DOD policy on commercial computer software), FAR 52.227-19 (DEC 2007) (commercial computer software clause for civilian agencies), DFARS 252.227-7015 (NOV 1995) (DOD technical data - commercial items clause); FAR 52.227-14, including Alternates I, II, and III (DEC 2007) (civilian agency technical data and noncommercial computer software clause); and/or FAR 12.211 and FAR 12.212 (commercial item acquisitions), and any successor provisions. Use of the Company Products by the U.S. Government constitutes acknowledgment of Company's proprietary rights therein. The Contractor or Manufacturer is LANDesk Software, Inc. (or its subsidiaries or affiliates), with an office at 698 West 10000 South, Suite 500, South Jordan, UT 84095, USA.

## 12.3 Force Majeure.

Force Majeure Terms are detailed in DIR Contract No. DIR-SDD-2198, Appendix A, Section 10.C. Force Majeure.

## 12.4 Assignment.

Assignment Terms are detailed in DIR Contract No. DIR-SDD-2198, Appendix A, Section 4.D. Assignment.

**12.5 Relationship of the Parties.** Neither Party hereto will be deemed to be the agent nor legal representative of the other Party for any purpose whatsoever, and each Party will act as an independent contractor with regard to the other Party in its performance under this Agreement. The Agreement shall not authorize either Party to create any obligation or responsibility whatsoever, express or implied, on behalf of the other Party, or to bind the other Party in any manner, or to make any representation, commitment or warranty on behalf of the other Party.

**12.6 Headings.** Headings to sections and subsections of this Agreement are for convenience only, do not form a part of this Agreement, and shall not affect the interpretation thereof. Where the context so requires, the singular will include the plural and the plural will include the singular.

**12.7 Survival.** Upon termination or expiration of this Agreement for any reason, all use restrictions, confidentiality obligations, as well as the following sections of this Agreement shall remain in effect: Exhibit A: Section 6, Limitation of Liability; Section 9, Governing Law; Section 10, Term and Termination; and Section 12, General; Exhibit B: Section 4; and Exhibit C.

**12.8 Additional Rights and Remedies.** The rights and remedies provided in this Agreement are in addition to any other rights and remedies provided at law or in equity.

**12.9 Severability.** All rights and remedies, whether conferred hereunder, or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. Failure of either Party to enforce any of the provisions hereof shall not be construed to be an ongoing waiver thereafter. The provisions stated herein are declared to be severable. If any provision of this Agreement is held to be invalid, illegal, unenforceable, or in conflict with applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## EXHIBIT B: SUPPORT SERVICES

**1. SUPPORT PROGRAMS.** Company's support programs are point-based programs with benefits based on the level of annual investment in Company Products and Support Services. Customer can access its specific point totals through the Company's sales team, via the Service Portal, or on any Company sales quote. Points expire at the end of each Support Services period and new point calculations are done for each renewal period. Support levels may be adjusted anytime Customer purchases additional Support Services or support points. For more information, see <http://www.landesk.com/Support/ProgramDetails/>.

**2. SUPPORT SERVICES.** Subject to Customer's payment to Payee of the applicable annual Support Services fee and compliance with this Agreement, Company shall provide Customer the Support Services for Customer's support level (based on Customer's point total).

**2.1 Support Services Period.** Support Services are provided by Company to Customer on an annual basis (or as otherwise specified in the Order Form) and begins on the Effective Date.

(i) **Auto-Renew.** To ensure uninterrupted use of the Support Services, Customer's purchased Support Services shall automatically renew for an additional one (1) year period unless either Party provides written notice not to auto-renew to the other Party at least sixty (60) days before the end of the then-current Support Services period. For each renewal, Customer shall pay to Payee the applicable annual Support Services fee as calculated pursuant to Payee's then-current fee schedule.

(ii) **Reinstating Support Services.** If Customer elects to re-purchase any Support Services previously terminated or that otherwise expired, Customer will be required to pay a reactivation fee for the time that has lapsed since the end of such prior Support Services and the fees for the entire next annual period.

**2.2 Available Support.** Depending on Customer's support point total, Customer may qualify for any of the following support offerings:

Available Support Services	SUP	ICP	PS	ES	EPS
Updates & Upgrades (1)	Yes	Yes	Yes	Yes	Yes
Email Alerts (2)	Yes	Yes	Yes	Yes	Yes
Support Web Site Access (3)	Yes	Yes	Yes	Yes	Yes
E-Learning Library Access Subscriptions (4)	0	0	1	3	5
Instructor-led Online (ILO) Training Days (4)	0	0	1	2	3
24 x 7 Issue/Question Submission (5)	No	No	Yes	Yes	Yes
Standard Phone Support (6)	No	No	Yes	Yes	Yes
Incident Tracking and Response (7)	No	No	Yes	Yes	Yes
24 x 7 Phone Support (8)	No	No	No	Yes	Yes
Support Account Manager (SAM) (9)	No	No	No	No	Yes
Priority Phone Support and Support Hotline (10)	No	No	No	No	Yes

(1) Updates and Upgrades for licensed and paid for Company Products when available to the general customer base.

(2) Company provided Email Alerts.

(3) Subject to general up-time and availability, Customer is eligible to access Company's Service Portal (to initiate and track Incidents) and support services web (including technical support knowledge base, technical support white papers, and critical patches and software fixes).

(4) E-Learning Library subscriptions and ILO training are subject to separate agreements and registration at each respective site.

(5) Customer may submit issues and questions 24 hours per day, 365 days per year via the Service Portal (P1 and P2 issues must be submitted by phone only). Company's replies delivered during Business Hours.

(6) Telephone support generally available during Business Hours. For PS level, telephone support available during Business Hours for P1 issues only.

(7) Incident tracking and response (see Section 2.4 below).

(8) Telephone support available 24 hours per day, 365 days per year for P1 issues only.

(9) Single point of escalation for support issues for EPS level customers. Provides quarterly reports (summarizing Customer specific support matters including update on support incidents, status of onsite work and of any vouchers, and recap of proactive notifications), and manages an annual 15-point health-check review of server and client configurations.

(10) Priority access to customer support with a phone line dedicated to EPS-level customers (number provided separately to eligible customers).

See <http://www.landesk.com/support/> for information on Support Services.

**2.3 Incident Packs.** Support Services for each Incident in a purchased Incident pack are the only support available to customers in the Base Support level (0 – 2,999 Points) and only if the box on an Order Form corresponding to "Base Support Plus Incident Packs" has been checked. For Customers purchasing Incident Packs, Company will provide:

(i) Email-based support, including Customer submission of Incidents 24 hours per day, 365 days per year via email. Telephone submission and support is available for P1 Incidents during Business Hours. Such support is available for each Incident up to the total number of Incidents purchased by the Customer.

(ii) Access to the Service Portal to initiate and track support tickets for Incidents without help desk intervention.

(iii) A three month subscription to the LANDesk E-Learning library.

**2.4 Incident Tracking and Response.** Each Incident submitted by Customer for Support Services will be issued a Company tracking number. Company will respond to and set internal resolution priority for each reported Incident on the following basis:

Severity Level	Response Time in Business Hours	
	PS	ES or EPS
Priority Level 1 or P1	2	1
Priority Level 2 or P2	8	4

If an EPS level customer has a Priority Level 1 Incident that needs around-the-clock work, the Company's support team will transfer the Incident from region to region through the Company support sites (in the United States, China, and Europe) as needed so long as Customer also has dedicated resources working on a 24x7 basis to resolve the Incident.

**2.5 Technical Contacts.** Each of Customer's designated technical contacts will be responsible for interfacing with Company for all Support Services. The number of technical contacts for Customer is determined by Customer's then-current support level as set forth in the table below:

	SUP	ICP	PS	ES	EPS
Technical Contacts	0	2	2	4	10

Each technical contact must be familiar with the Company Products and be capable of (and appropriately authorized for) performing basic network administrative functions. Customer shall identify its technical contacts to Company as reasonably required by Company and Customer may change its designated technical contacts on written notice to Company. Additionally, Customer may qualify to receive additional technical contacts by having individuals become certified in Company Products. Any Certified LANDesk Administrator (or greater) can be added as an additional technical contact to Customer's account. For more information, see <http://www.landesk.com/SolutionServices/product.aspx?id=2337>



**2.6 Technical Account Management.** If Customer qualifies for PS, ES or EPS level support, Customer may also purchase any of Company's Technical Account Manager (TAM) offerings (as indicated by a checked box on the Technical Account Management section of the Order Form):

TAM Type	Advantage	Premier	Enterprise	Dedicated
Vouchers (1)	1	2	4	8
TAM to Customer Ratio (2)	1/14	1/7	1/7	1/1
Response Time (3)	2 Hours	1 Hour	1 Hour	30 Minutes
On-Site Visits (4)	0	8	16	32
Assigned TAMs (5)	1	1	2	1
SAM (6)	No	Yes	Yes	Yes
Health Check (7)	0	1	2	Per Product Owned
Available Specialty (8)	LDMS/LDSS	ALM/LPM, LDMS/LDSS, or LDSD	ALM/LPM, LDMS/LDSS, or LDSD	ALM/LPM, LDMS/LDSS, or LDSD
Language Support (9)	No	Yes	Yes	Yes
Contacts (10)	2	3	6	6

(1) Number of vouchers to attend regularly scheduled training sessions at Company's facility (Customer responsible for all travel and expenses) or via the online learning system. Vouchers expire on the regular TAM Period schedule as outlined in Section 2.7.

(2) Ratio of TAM customers generally assigned to TAM type. Disproportionate customer use of TAM's time that extends for more than three months will require an upgrade to a higher level TAM.

(3) During TAM hours of availability, assigned TAM shall use commercially reasonable efforts to respond to any phone contact from Customer within the time specified. TAM shall be available 8am-5pm, Monday through Friday (excluding LANDesk Holidays), based on the location of the TAM and not the Customer. During hours outside of TAM availability, Customer with a Premier, Enterprise or Dedicated TAM offering may call the 24x7 support line.

(4) Number of days during each annual period (as measured from the Effective Date) the TAM shall be available for on-site visits to Customer's facility (subject to agreed timing). Onsite days must be used in at least 2 consecutive day increments, not to exceed a total of 3 trips for the Premier TAM offering, 6 trips for Enterprise and 12 trips for Dedicated.

(5) Number of TAMs assigned to Customer.

(6) If Customer does not already have a Support Account Manager (SAM), a SAM will be included with the Premier, Enterprise or Dedicated TAM offering.

(7) Number of remote health checks performed on an annual basis.

(8) TAMs are product specific and Customer may select TAM specialists for the following products: Asset Lifecycle Manager (ALM), LANDesk Service Desk (LDSD), LANDesk Process Manager (LPM), LANDesk Management Suite (LDMS) or LANDesk Security Suite (LDSS).

(9) Local language support available by request through the SAM or TAM in one of the following languages: English, French, German or Japanese.

(10) Number of assigned Customer contacts that may open issues with the assigned TAM.

For more information on the Company's various TAM offerings, see <http://www.landesk.com/Support/TAM/>.

**2.7 TAM Period.** Unless otherwise specified in the applicable Order Form, TAM offerings are provided to purchasers on an annual basis and the initial period for TAM coverage begins on the Effective Date and ends one (1) year thereafter. To ensure uninterrupted use of any TAM offering purchased by Customer, the TAM services shall automatically renew for additional one (1) year periods unless either Party provides written notice not to auto-renew the TAM offering to the other Party at least sixty (60)

days before the end of any TAM period. For each renewal, Customer shall pay to Payee the applicable annual TAM fee as calculated pursuant to Payee's then-current fee schedule.

**2.8 Coverage.** If Customer elects to purchase Support Services for a Company Product, Customer must purchase such Support Services for all instances and uses of such Company Products during the support term. For example, a customer licensing 1000 nodes of LANDesk Management Suite cannot purchase support services for only 500 nodes.

Except as expressly required by applicable law or as expressly set forth herein, nothing in this Agreement either requires Company to provide or entitles Customer to any Support Services or Professional Services without Company's agreement and Customer's payment of all applicable fees.

**2.9 Support Services Scope.** The provision of Support Services does not extend or modify any limited warranty for any Company Products. Support Services, Updates and Upgrades do not include any type of installation, deployment, or application assistance for Customer's unique requirements or environment. Support Services for Company Products are provided for questions regarding installation, configuration and usage; provided, however, that Company shall not be obligated to provide Support Services with regard to Customer's unique requirements. Company does not represent, warrant or guarantee that any of the Support Services provided hereunder or the referenced Response Times will correct or resolve any Error within any specific time period. If requested by Company to better perform the Support Services and help resolve any specific Incidents, Customer shall permit Company or its representative access to Customer's specific implementation and use of the Company Product (access must be approved of by Customer's technical contact).

**2.10 Support Service Exceptions.** Company shall be under no obligation to furnish Software Upgrade Protection and/or Support Services for any Company Products to the extent that such Software Upgrade Protection and/or Support Services is necessary or desired as a result of: (i) the operation of the Company Products in environmental conditions or configurations outside those described in the Documentation; (ii) Customer's failure to upgrade or update the Company Products to a supported version (requirements specified at <http://www.landesk.com/support/eol.aspx>) or to maintain the Company Products in accordance with the standards described in the Documentation or as specified any Support Services received by Customer from Company; (iii) actions of any third party other than Company or a third party authorized by Company; and (iv) causes unrelated to the Company Products as delivered to Customer by Company, including without limitation, modifications to the Company Products, made by Customer or on Customer's behalf. It is Customer's sole responsibility to properly install and use Company Products and any Updates and Upgrades.

### 3. PROFESSIONAL SERVICES.

Professional services are not within the scope of DIR Contract No. DIR-SDD-2198.

**3.1 Rescheduling Policy.** If Customer postpones or reschedules a project fewer than ten (10) business days but more than five (5) business days prior to the start date of a project, Customer shall pay LANDesk fees equal to the fees quoted for one (1) day of Services under the project or \$2,500, whichever is less. If Customer postpones or reschedules a project fewer than five (5) business days prior to the start date of a project, Customer shall pay LANDesk fees equal to the fees quoted for: (i) the number of days of Services postponed, (ii) one week of Services due for the project as if it had been fully performed, or (iii) \$12,500, whichever is less.

**4. DELIVERABLE MAINTENANCE.** Company may, at its sole discretion, include any Deliverable in current or future Company Products. If Company decides that any Deliverable will not be included in any current or future Company Product, Customer may negotiate a separate sustaining fee with Company for the continued maintenance of such Deliverable for compatibility with other current or future Company Products. If Company and Customer cannot agree as to the fee and other terms for such maintaining such Deliverable, the Deliverable will be licensed to Customer on an "AS IS" basis without further obligation on the part of the Company.

## **EXHIBIT C: DEFINITIONS**

**1. DEFINITIONS.** The following definitions apply to this Agreement (including all Exhibits):

**1.1 "Affiliate"** means any entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control (through the continued direct or indirect ownership of more than fifty percent (50%) of the outstanding voting securities or rights of the entity provided) with Customer. If the Customer's direct or indirect ownership of such entity declines to fifty percent (50%) or less, such entity shall cease to be an Affiliate under this Agreement.

**1.2 "Agreement"** means this Master Software License and Support Agreement, including any and all Exhibits hereto.

**1.3 "Authorized Certificate"** means the software certificate required for use of the Company Products consisting of two components: (a) a software component generated by Company; and (b) a hardware component generated for the particular hardware configuration of each Server. The hardware component is generated using non-personal factors such as the size of the hard drive, the processing speed of the computer, etc., and is sent to Company in an encrypted format, with a private key that remains on the Server.

**1.4 "Authorized Nodes"** means the quantity of Nodes, Concurrent Users, Servers and/or Seats for which Customer has purchased licenses. Customer must purchase a sufficient number of Authorized Nodes to cover all use of Company Products. The number of Authorized Nodes licensed as of the Effective Date is detailed on the Order Form.

**1.5 "Business Hours"** means Company's normal business hours which are from 6:00 A.M. to 6:00 P.M., local time in Utah, Monday through Friday (excluding Company Holidays).

**1.6 "Company"** means the LANDesk entity identified on the first page of the Agreement.

**1.7 "Company Holidays"** means specified days Company is closed for business (see <http://www.landesk.com/Support/ContactUs/Index.aspx>).

**1.8 "Company Products"** means the collective reference to the Software Products and Hardware Products (or any portion thereof) and related Documentation. Company may make changes to any Company Product or to the available Company Products at any time and from time to time.

**1.9 "Concurrent Analyst" or "Concurrent Console"** means the maximum number of administrative users that may concurrently use or access the identified Company Product. For the LANDesk Asset Lifecycle Management product, one Concurrent Analyst is "used" for each analyst using the web "Asset Administrator" in any 30 minute period (this restriction does not apply to use of the Win32 console).

**1.10 "Concurrent Users"** means the maximum number of users that may concurrently use or access the identified Company Product.

**1.11 "Confidential Information"** means any non-public information disclosed by one Party to the other Party, either directly or indirectly, whether communicated in writing, orally or by inspection of tangible objects (including, without limitation, product plans, products, services, customers, software, Software Products, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or financial information), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally shall be considered to be Confidential Information if such information is identified as Confidential Information at the time of its disclosure, or if such information by its nature should reasonably be understood by the receiving Party to be confidential. Confidential Information shall include this Agreement, any and all non-public information relating to any Company Product or other Company proprietary software and any associated training, Documentation and other related materials, regardless of whether or not such materials are marked as "Confidential," "Proprietary" or some similar designation. Confidential Information may also include information that is disclosed to a Party by one or more third parties. Notwithstanding the foregoing, Confidential Information shall not include any information that: (a) was publicly known prior to the time of disclosure by the disclosing Party; (b) becomes publicly known after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party; (c) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party (as shown by the receiving Party's files and records) prior to the time of disclosure; (d) is obtained by the receiving Party from a third party without a breach of such third party's obligations of confidentiality; (e) is independently developed by the receiving Party without use of or reference to the

disclosing Party's Confidential Information (as shown by documents and other competent evidence in the receiving Party's possession); or (f) is required by law to be disclosed by the receiving Party, provided that the receiving Party shall promptly give the disclosing Party written notice of such requirement prior to any disclosure so that the disclosing Party may have sufficient time to seek a protective order or other appropriate relief.

**1.12 "Customer"** means the entity identified as "Customer" on the first page of this Agreement.

**1.13 "Deliverable"** means all work product, software, code, programs, customizations, or other deliverables created by Company (or a Company Affiliate, contractor, consultant, licensor, supplier, or vendor at the direction of Company) for Customer pursuant to this Agreement, any purchased Support Services, or any purchased Professional Services.

**1.14 "Documentation"** means any end-user installation and/or user guide, manual, and other end-user technical information, whether in printed or electronic form, provided by Company to a licensed end user for the applicable Company Products. Documentation specifically excludes design documentation and any documentation related to the source code of the Company Products.

**1.15 "Effective Date"** means the date set forth on the first page of this Agreement.

**1.16 "Email Alerts"** means the Company provided email notices to participants about technical updates, patches, utilities, and other documentation (see <http://community.landesk.com/support/> to enroll). Company is not liable for any failure of Customer to receive alerts, including due to failure of e-mail systems or Internet connectivity.

**1.17 "Error"** means a reproducible failure of a properly licensed, implemented, and used Company Product to perform in substantial conformity with the applicable Documentation. When notifying Company of any suspected Error, Customer must provide Company with detailed information about the Error, including an example, the context in which it was encountered, details of Customer's system configuration, and the steps necessary to generate or reproduce the Error. The priority level of an Error shall be determined by Company in its sole discretion (using the priority definitions described in this Agreement).

**1.18 "Fees"** means all fees negotiated between Customer and Payee for the perpetual licenses and subscriptions to the Company Products, Hardware Products, Support Services, and Professional Services specified on an Order Form and due under this Agreement.

**1.19 "Hardware Products"** are not within the scope of DIR Contract No. DIR-SDD-2198.

**1.20 "Incident"** means a single support issue with a Company Product and the reasonable effort needed to resolve it. A single support issue cannot be divided into sub-problems regardless of the amount of effort required to resolve the issue. If an issue consists of multiple problems, a separate incident will be required to solve each problem. Company shall determine what constitutes an incident on a case-by-case basis.

**1.21 "Infringement Claim"** means a claim by a non-affiliated third party against Customer asserting that Customer's use of a Company Product or Deliverable in accordance with this Agreement violates that third party's United States patent, trademark, or copyright.

**1.22 "Inventions"** means all ideas, designs, concepts, techniques, technology, know-how, processes, methods, configurations, inventions, discoveries, and improvements, regardless of whether they are patentable or subject to protection under any intellectual property rights including, without limitation, U.S. and foreign patents, copyrights, trademarks, service marks, trade dress, mask works (and all rights in applications, actions and registrations relating thereto), know-how, moral rights, rights of publicity, and trade secrets (any scientific or technical data, information, design, process, procedure, formula, or improvement that is commercially valuable to the owner and not generally known in the industry).

**1.23 "Node"** means each personal desktop computer, portable computer, handheld device, workstation, console, seat, server, and other similar device using one or more Company Products including without limitation (a) a physical device such as a computer, (b) a Virtual Machine, such as an operating environment that may be running concurrently with another operating environment on a single physical device, (c) an object stored by the Company Product in a database, such object representing a physical or virtual asset for which data is being tracked or managed by the Company Product (e.g., printer, copier, etc.), or (d) for the LANDesk



Antivirus for Mail Servers product, an electronic or virtual mailbox (e.g., a mailbox for email).

1.24 **"Node Count Data"** means information periodically generated by the Company Products about (a) the precise current usage (quantity and type) of Company Products on a Server, and (b) the non-personal, encrypted hardware configuration of that Server.

1.25 **"Order Form"** means the initial order form from Customer (attached hereto as Exhibit D) or any other future order form referencing this Agreement and accepted by Company from Customer.

1.26 **"Party"** means either Company or Customer, as applicable; **"Parties"** means both Company and Customer.

1.27 **"Payee"** means either the Company Authorized Reseller or Company as indicated by the checked box under the heading "Sales Model" on the first page of this Agreement.

1.28 **"Perpetual Software"** means the current version of the subset of Software Products ordered by Customer (as indicated by the check mark in the applicable box on the Order Form) and identified as "Perpetual" under the "Product Type" heading of a valid Order Form and any applicable Update or Upgrade, if any.

1.29 **"Priority Level 1"** or **"P1"** means an Incident where, notwithstanding proper installation and use: (a) a substantial portion of one or more Company Products does not operate and cannot be restarted; (b) there is an Error in a major program function that renders such major program function completely unusable; or (c) there is an Error that causes a third-party, mission-critical application to be unstable. P1 issues must be submitted to Company by phone.

1.30 **"Priority Level 2"** or **"P2"** means an Incident where, notwithstanding proper installation and use, there is an Error in a major program function causing significant impact to one or more Company Products such that the Company Product is difficult but not impossible to use. P2 issues must be submitted to Company by phone.

1.31 **"Priority Level 3"** or **"P3"** means an Incident where, notwithstanding proper installation and use: (a) there is non-critical degradation of performance or function in one or more Company Products; or (b) there are minor intermittent problems in one or more Company Products. A commercially reasonable workaround may be available. Incidents submitted to Company other than by phone will be classified as a P3 or P4 incident, at Company's reasonable discretion.

1.32 **"Priority Level 4"** or **"P4"** means all requests for an enhancement to, information, questions, or Documentation issues concerning one or more Company Products or Errors with little or no effect on normal operation of the Company Product.

1.33 **"Services"** means any of Company's implementation, deployment, consulting, training, and education services available for Customer's purchase (as specified in the Order Form and any related Statement of Work).

1.34 **"Product Type"** means the license classification for each Company Product is specified on the attached Order Form (identified as "Perpetual," "Subscription," "Support Services," under the heading "Product Type"). Some Company Products (for example, LANDesk Security Suite) have both a perpetual component (for the core functionality) and a subscription component (generally for content used with the core functionality).

1.35 **"Reseller"** means the Company Authorized Reseller identified on the first page of this Agreement, from which Customer may purchase Company Products. Customer may change to another Company Authorized Reseller upon written notice to Company provided that Company may inform both the prior and any new Company Authorized Reseller of the Customer's purchase history and requested changes.

1.36 **"Response Time"** means the time between the receipt of a properly classified and reported P1 or P2 support request (as indicated by the date and time the support ticket was created) and the first acknowledgement and response from Company.

1.37 **"Seat"** means the number of individual users who have access to use the identified Company Product. When logged in, a seat counts towards the number of concurrent users allowed.

1.38 **"Server"** means any computer or server within the possession and control of Customer on which any Software Product is installed and which manages one or more Nodes pursuant to this Agreement.

1.39 **"Service Portal"** means Company's on-line, self-service site for customers to find solutions to support issues, content and articles, the solution advisor, and other support-related resources and options (see <http://community.lanidesk.com/support/community/smartservice>).

1.40 **"Software Products"** means the collective reference to the Company's software programs (both Perpetual Software and Subscription Software) licensed by Company to Customer pursuant to this Agreement including any applicable Updates and Upgrades for which Customer is entitled to receive. All Software Products (Deliverables) are available and licensed only in object code (the executable or binary form).

1.41 **"Software Upgrade Protection"** or **"SUP"** means Company's provision of Updates and Upgrades to the applicable Company Products provided to (a) licensees of the Subscription Software; (b) licensees of the Company Products who have paid for one of Company's Support Services; or (c) licensees that order and pay for this option as part of the lease or other subscription of the Company Products, if any. Company may modify its Software Upgrade Protection offering at any time provided that such modifications do not materially decrease the Support Services purchased by Customer under this Agreement.

1.42 **"Subscription Software"** means the current version of the subset of Software Products ordered by Customer (as indicated by the check mark in the applicable box on the Order Form) and identified as "Subscription" under the "Product Type" heading of a valid Order Form, and any applicable Update or Upgrade, if any.

1.43 **"Support Community"** means Company's on-line site for purchasers of Company's Support Services (available at <http://community.lanidesk.com>) to find and share information about Company Products (including technical articles, a forum for posting questions, and the ability to contribute documents). Registration is required for participation in the Support Community.

1.44 **"Support Services"** means any of the Software Upgrade Protection, technical support, and additional support personnel made available by Company for purchase by customers (additional details available <http://www.lanidesk.com/supportdownload/default.aspx>). The Support Services purchased by Customer are specified on the Order Form.

1.45 **"Statement of Work"** means Company's standard form for orders of Professional Services, signed by both Parties, and establishing, at the minimum, (a) the work to be performed; (b) duration of such work (usually in a number of days); and (c) compensation and payment terms (usually on a time and materials basis with terms for coverage of travel and reimbursable expenses).

1.46 **"Technical Account Manager"** or **"TAM"** means a Company-assigned support engineer designated as the communication point for Customer's account for Support Services for specified Company Product(s).

1.47 **"True Up"** means a Customer-performed inventory of all Company Products and Nodes in use by Customer (and Affiliates, contractors, and consultants).

1.48 **"Update"** means a Company-designated correction, extension, or fix to an existing release of a Company Product, generally designed to address one or more Errors or reduce the effects thereof. A Company Update may also include enhanced, improved or modified functionality (as determined in Company's sole discretion). All Updates are provided on an "AS IS" basis only and in object code only.

1.49 **"Upgrade"** means a Company-designated, enhanced, improved and/or modified replacement for an existing Company Product. All Upgrades are provided on an "AS IS" basis only and in object code only.

1.50 **"Virtual Machine"** means a single instance of an operating system running in a "virtualized" computer, such as an operating environment that may be running concurrently with another operating environment on a single physical device. Each Virtual Machine is treated as an individual physical machine for licensing and usage purposes.

### **EXHIBIT D: INITIAL ORDER FORM FOR COMPANY PRODUCTS**

Pursuant to this Agreement, Customer is electing to purchase the specified licenses for the Software Products (based on the Product Type identified below), any Hardware Products, the Support Services, and any Professional Services:

<b><u>SOFTWARE PRODUCTS</u></b>	<b>Product Type</b>	<b>License Basis</b>				
		<b>Nodes</b>	<b>Servers</b>	<b>Concurrent</b>		<b>Seats</b>
				<b>Users</b>	<b>Analyst</b>	

**Systems Management Software:**

<input type="checkbox"/> LANDesk® Management Suite	Perpetual					
<input type="checkbox"/> LANDesk® Application Virtualization (2)	Perpetual					
<input type="checkbox"/> LANDesk® System Manager	Perpetual					
<input type="checkbox"/> LANDesk® Server Manager	Perpetual					
<input type="checkbox"/> LANDesk® Power Manager	Perpetual					
<input type="checkbox"/> LANDesk® Handheld and Embedded Manager	Perpetual					
<input type="checkbox"/> LANDesk® Host-based Intrusion Protection	Perpetual					
<input type="checkbox"/> LANDesk® Network Access Control	Perpetual					
<input type="checkbox"/> LANDesk® Inventory Manager	Perpetual					
<input type="checkbox"/> LANDesk® Migration Manager (6 month subscription)	Subscription					
<input type="checkbox"/> LANDesk® Classroom Manager (2)	Perpetual	Classrooms -		Sites -		

**Security, Patch and AV Software:**

<input type="checkbox"/> LANDesk® Security Suite core functionality (1)	Perpetual					
<input type="checkbox"/> LANDesk® Security Suite content (3) (4)	Subscription					
<input type="checkbox"/> LANDesk® Patch Manager core functionality (1)	Perpetual					
<input type="checkbox"/> LANDesk® Patch Manager content (3) (4)	Subscription					
<input type="checkbox"/> LANDesk® Antivirus core functionality (1)	Perpetual					
<input type="checkbox"/> LANDesk® Antivirus content (3) (4)	Subscription					
<input type="checkbox"/> LANDesk® Antivirus for Mail Servers core functionality (1)	Perpetual					
<input type="checkbox"/> LANDesk® Antivirus for Mail Servers content (3) (4)	Subscription					

**Asset and Process Management Software:**

<input type="checkbox"/> LANDesk® Asset Lifecycle Manager	Perpetual					
<input type="checkbox"/> LANDesk® ALM 5-Listener Pack	Perpetual					
<input type="checkbox"/> LANDesk® ALM Process Integration Module	Perpetual					
<input type="checkbox"/> LANDesk® Process Manager	Perpetual					

**Service Management Software:**

<input type="checkbox"/> LANDesk® Service Desk (5)	Perpetual					
<input type="checkbox"/> LANDesk® Active Knowledge	Perpetual					
<input type="checkbox"/> LANDesk® Management Information	Perpetual					
<input type="checkbox"/> LANDesk® Resource Manager	Perpetual					
<input type="checkbox"/> LANDesk® Active Assistance	Perpetual					
<input type="checkbox"/> LANDesk® Customer Service Desk (5)	Perpetual					
<input type="checkbox"/> LANDesk® Web Desk	Perpetual					
<input type="checkbox"/> LANDesk® Self Service	Perpetual					
<input type="checkbox"/> LANDesk® Configuration Manager	Perpetual					
<input type="checkbox"/> LANDesk® Unlimited Processes	Perpetual					

SOFTWARE PRODUCTS (CONTINUED)	Product Type	License Basis				
		Nodes	Servers	Concurrent		Seats
				Users	Analyst	

**Service Desk Process Packs:**

<input type="checkbox"/> LANDesk® Human Resources Process Pack	Perpetual					
<input type="checkbox"/> LANDesk® Asset Management Process Pack	Perpetual					
<input type="checkbox"/> LANDesk® Release Management Process Pack	Perpetual					

**Service Desk Integrations:**

<input type="checkbox"/> Pass Me	Perpetual					
<input type="checkbox"/> Computer Telephony Integration (QGate CTI)	Perpetual					
<input type="checkbox"/> Address Management - Capscan Matchcode	Perpetual					
<input type="checkbox"/> Novell ZENworks Integration	Perpetual					
<input type="checkbox"/> Microsoft SMS/SCCM Integration	Perpetual					
<input type="checkbox"/> External (Generic) Connector	Perpetual					
<input type="checkbox"/> Service Desk OpenTouch Integration Toolkit	Perpetual					
<input type="checkbox"/> CastleRock SNMPc	Perpetual					
<input type="checkbox"/> Solarwinds Orion Integration	Perpetual					

- (1) Core program functionality only. Content and Software Upgrade Protection provided only with a current Subscription Software License.  
(2) Licensed under a separate end user license agreement presented on installation or available upon request.  
(3) Content-only Subscription. Customer must also have a license for the corresponding core program functionality.  
(4) Includes 1 year of Software Upgrade Protection for this Company Product.  
(5) Customers are licensed for 5 active processes.

<b>HARDWARE PRODUCTS ARE NOT WITHIN THE SCOPE OF DIR CONTRACT NO. DIR-SDD-2198</b>	Product Type
<input type="checkbox"/> LANDesk® Management Gateway – Number of Units: _____	Hardware

<b>SUPPORT SERVICES</b>	Product Type
<input type="checkbox"/> Software Upgrade Protection ("SUP")	Support Services

**Support – Initial Level and Term:**

<input type="checkbox"/> 0 – 2,999 Points: Base Support with Incident Packs ("ICP") <input type="checkbox"/> 0 <input type="checkbox"/> 5 <input type="checkbox"/> 10 <input type="checkbox"/> 25 <input type="checkbox"/> 50	Support Services
<input type="checkbox"/> 3,000 – 49,999 Points: Professional Support ("PS")	Support Services
<input type="checkbox"/> 50,000 – 199,999 Points: Enterprise Support ("ES")	Support Services
<input type="checkbox"/> 200,000+ Points: Enterprise Plus Support ("EPS")	Support Services

First Day of Support Term: \_\_\_\_/\_\_\_\_/\_\_\_\_ (If no date provided default is the Effective Date of this Agreement)

Last Day of Support Term: \_\_\_\_/\_\_\_\_/\_\_\_\_ (If no date provided default is one (1) year after the Effective Date of this Agreement)

**Technical Account Manager ("TAM") Services and Term:**

<b>Available Specialty:</b> <input type="checkbox"/> ALM/LPM <input type="checkbox"/> LDMS/LDSS <input type="checkbox"/> LDSD	
<input type="checkbox"/> Advantage TAM	Support Services
<input type="checkbox"/> Premier TAM	Support Services
<input type="checkbox"/> Enterprise TAM	Support Services
<input type="checkbox"/> Dedicated TAM	Support Services

First Day of TAM Term: \_\_\_\_/\_\_\_\_/\_\_\_\_ (If no date provided default is the Effective Date of this Agreement)

Last Day of TAM Term: \_\_\_\_/\_\_\_\_/\_\_\_\_ (If no date provided default is one (1) year after the Effective Date of this Agreement)

\* Asset Lifecycle Manager = ALM, LANDesk Process Manager = LPM, LANDesk Management Suite = LDMS, LANDesk Security Suite = LDSS, LANDesk Service Desk = LDSD.

<b>PROFESSIONAL SERVICES ARE NOT WITHIN THE SCOPE OF DIR CONTRACT NO. DIR-SDD-2198</b>	Product Type
<input type="checkbox"/> LANDesk Professional Services (Requires a signed Statement of Work)	Pro. Services
<input type="checkbox"/> LANDesk Training (Requires a signed Training Agreement)	Pro. Services
<input type="checkbox"/> LANDesk Education (Requires a signed Education Agreement)	Pro. Services